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Downtown West: Subsequent Review Process Term Sheet

I. Overview of Subsequent Review

The Downtown West Planned Development Zoning District (PD Zoning District) is individually designed to meet the needs of the subject property. The Downtown West General Development Plan (GDP), which is adopted as part of the ordinance approving the PD Zoning District, establishes the uses and requirements of the PD Zoning District. The Planned Development Permit (PD Permit), which effectuates the PD Zoning District, includes the Downtown West Design Standards and Guidelines (DWDSG), the Downtown West Improvement Standards (DWIS), and the Conceptual Infrastructure Plan Sheets. The DWIS establishes standards for permitting certain horizontal improvements and describes permitting procedures for district systems.

The GDP establishes the following subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the PD Zoning District:

- A. Conformance Review: Vertical Improvements and Open Space. The GDP establishes the Downtown West PD Zoning / Design Conformance Review process (Conformance Review) to ensure that development of vertical improvements and open space within the PD Zoning District substantially conforms to the requirements of the GDP, applicable standards and guidelines of the DWDSG, the Downtown Design Guidelines (DDG) and other applicable planning documents.
- B. Final Map and Improvement Plans: Horizontal Improvements. During the final subdivision mapping and improvement plan process, the project sponsor shall demonstrate consistency with all tentative map conditions of approval to ensure compliance with applicable standards and guidelines in the DWDSG (Chapter 6 (Mobility) and other DWDSG standards designated *[H/I]*) in addition to applicable standards and guidelines in the Complete Streets Design Standards and Guidelines (CSDSG), DWIS, and other applicable infrastructure documents.

Sections II and III of this term sheet address key requirements of the Conformance Review process for Vertical Improvements and Open Space. Section IV addresses key requirements of the subsequent review process for Horizontal Improvements.

II. Key Requirements for Conformance Review Process

- A. Vertical Improvement Conformance Review Application Requirements

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Each Vertical Improvement Conformance Review application shall include the following documents, site plan, and drawings, as applicable, for the area that is the subject of the Conformance Review application:

General Note:

- A. All drawings, except for location map, shall be drawn to scale, at an appropriate scale between project size to sheet size and no smaller than 1/32" - 1'-0".
- B. Submittal name and date, North arrow, key plan, project name, project sponsor's name, sheet title and sheet numbers shall all be included in the title block.
- C. Drawings shall include dimensions that describe the development envelope and relationship with the property line.

1. Data Chart. Each submittal shall include a data chart addressing the following, as applicable:

- a. Name, address, proposed use, project sponsor contact information, general plan designation, assessor's parcel number(s).
- b. Program of land uses and open space and approximate gross square footage of each use.
- c. Proposed total building gross square footage above and below grade.
- d. Anticipated building height and number of floors on a building-by-building basis.
- e. Approximate number of off-street automobile parking stalls (identify private vs public) and long-term and short-term bicycle storage.
- f. The total number of residential units proposed, including the number of market rate units and below-market rate units.
- g. The number of residential units and/or amount of non-residential square footage transferred from one Sub-Area to another as permitted under the GDP. The description shall include information (a) demonstrating that the proposed transfer does not exceed the maximum number of residential units and the total square footage for each non-residential use permitted in the GDP; (b) showing the reductions in the number of residential units and/or non-residential square footage from a contributing Sub-Area.
- h. A description of any proposed conversions of land uses as permitted under the GDP.

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- i. A data table identifying the square footage of development by land use that either has been completed or is under active construction with the project area.
 - j. Building Occupancy(ies), occupancy separation, type(s) of construction, fire control system.
2. Site Plan and Drawings. The project sponsor shall submit site plan and drawings that pertain to the area of development included in the Conformance Review application, showing where applicable:
- a. Building relationships to landscaped areas, roads, sidewalks, mid-block passageways, any transit facilities, and open space areas. Include as applicable easements or setbacks. Public right-of-way improvements shown and dimensioned for reference only.
 - b. Location of all existing buildings to be retained, and all proposed buildings.
 - c. Location of driveways.
 - d. Location of on-street and off-street parking spaces, loading (as applicable), and circulation.
 - e. Fire access plan including fire exits, fire control room location(s), existing and proposed fire hydrants and/or standpipe, and fire truck access route.
 - f. All existing and proposed grading and drainage conditions to be documented including:
 - (a) Topography with pad elevations of the site and properties within 50 feet
 - (b) Trees, sizes, species and condition, and disposition
 - (c) Contours and top of curb or top of walls as applicable
 - (d) Drainage flows and overland release flows
 - (e) Retaining walls, swales and drainage structure
 - g. Proposed utility plan, stormwater control plan, and stormwater hydromodification management report, as applicable. (Refer to the city of San Jose's Universal Plan Application for detailed requirements.)
 - h. Building elevations, floor plans, and sections sufficient to describe the development proposal, the general architectural character, and materials proposed as well as sufficient details to meet the Vertical Conformance Review
 - i. For additions or modifications to existing building(s), clearly identify areas of changes, including materials and exterior elevation changes.

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- j. Landscape design drawings showing layouts, materials and intent of landscape elements within the site boundary including but not limited to curb cuts, tree locations, planting area, stormwater flow-through planters, plant species and layouts, paving, material palettes, furnishing elements, hydrozones, and outdoor lighting. Open space and public improvements located outside the boundary of the applicable Vertical Conformance Review application may be provided for reference only. If the project sponsor submits a combined application for Vertical Improvement and Project-Sponsor Owned Open Space, such open space shall be evaluated for conformance pursuant to the applicable Open Space conformance requirements.
- k. Private recreation credit exhibit, if sought, including a written summary of all on site recreational amenities, a table itemizing all proposed Private Recreation amenities by net square footage, location and classification type (active classification, non-active elements classification), dimensioned and labeled floor plans showing all recreational amenities, and photo simulations or other illustrative examples of proposed recreational accessories.

The project sponsor shall provide additional renderings, sketches, and other appropriate illustrative materials as reasonably necessary to: illustrate unique building design elements; to indicate the architectural character of buildings and the relationship of such buildings to streets and open spaces; or to demonstrate conformance with DWDSG standards.

- 3. Vertical Improvement Compliance Checklist. The project sponsor shall provide a completed Vertical Improvement Compliance Checklist, which is attached as Appendix C.1 (Vertical Conformance Review Checklist) to the DWDSG.

Compliance with applicable DWDSG standards shall be required.

Pursuant to the requirements of the GDP, the project sponsor shall consider DWDSG guidelines. Conformance review shall be approved notwithstanding inconsistency with guidelines where the project sponsor provides information showing the subject application achieves the applicable design intent set forth in the chapter of the applicable guideline. Inconsistency with guidelines shall not be grounds for disapproving a Conformance Review application if the project sponsor demonstrates that the application achieves the design intent set forth in the chapter of the applicable guideline. The project sponsor shall provide a narrative that identifies the applicable guideline(s), describes the reason(s) why consistency with the guideline is not possible, and describe how the subject application achieves the design intent in the chapter of the applicable guideline notwithstanding inconsistency with the applicable guideline.

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4. Minor Modifications, Exceptions, Deferrals and Amendments. The project sponsor may request a Minor Modification, Exception to a DWDSG standard, Deferral of a DWDSG Standard, or Amendment to the PD Permit as part of Conformance Review.
5. Focused Local Transportation Analysis (LTA). The project sponsor shall prepare and submit one or more Focused LTAs in compliance with the City's Transportation Analysis Handbook addressing consistency of site access, on-site circulation, and bus stop changes necessitated by roadway modifications to ensure they meet City requirements and standards; to provide detailed evaluation of multimodal access within the Project area; and to ensure that all proposed roadway network changes (i.e., additions or removals of street segments) would allow for adequate vehicle access to the Project area or surrounding areas.

B. Open Space Improvement Conformance Review Application Requirements

Each Open Space Improvement Conformance Review application shall indicate whether the area that is subject to the application includes City-Dedicated Open Space, Project Sponsor-Owned Open Space, or both. An Open Space Improvement Conformance Review application that includes City-Dedicated Open Space shall include a description describing compliance with applicable requirements under the parks agreement for City-Dedicated Open Spaces. At the project sponsor's election, an Open Space Conformance Review application for Project Sponsor-Owned Open Space may be submitted concurrently with a Vertical Improvement Conformance Review application for an adjacent developable area. In the event the project sponsor elects to submit an Open Space Conformance Review application for Project Sponsor-Owned Open Space and a Vertical Improvement Conformance Review application concurrently, the City shall review and process the applications concurrently as if a single application.

Each Open Space Improvement Conformance Review application shall include the submittal of the following documents, site plans, and drawings, as applicable, for the area that is the subject of the Conformance Review application:

1. Data Chart. Each submittal shall include a data chart addressing the following, as applicable:
 - a. Program of open space that identifies the individual open space(s) included within the application submittal.
 - b. Proposed open space acreage for each open space category, as applicable.
 - c. Amount of City Dedicated Park and/or Los Gatos Creek Multi-Use Trail.
 - d. Amount of Project-Sponsor-Owned Open Space.

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2. Site Plans and Drawings. The project sponsor shall submit site plans and/or drawings that pertain to the area of development included in the Conformance Review application, showing where applicable:
 - a. Land uses and building heights on blocks adjacent to the Open Space;
 - b. Park program and location of facilities, irrigation systems, and/or structures;
 - c. Anticipated vehicular, bicycle, and pedestrian circulation;
 - d. Active recreational uses;
 - e. Proposed grading, landscaping, and hardscape surface;
 - f. Locations and sizes of all utility and drainage connections and other service requirements.
 - g. Generalized locations for furnishings, lighting, art, and signage.
 - h. Palette of open space materials and elements for use in expressing the particular character of the open space, including but not limited to: paving and construction materials; plant materials; site and street furniture; lighting; water features and related art work.
 - i. A Conceptual Stormwater Control Plan;
- j. The project sponsor shall provide additional renderings, sketches, and other appropriate illustrative materials as necessary to demonstrate conformance with DWDSG standards.
3. City-Dedicated Parks (parks agreement Requirements). The project sponsor and the City will enter into an agreement for City-Dedicated Parks that will establish requirements for the preparation of Park Improvement Specifications (as defined in the agreement). The preparation and submittal of the Park Improvement Specifications shall be in addition to the requirements of the Open Space Conformance Review application outlined in this Section II for City-Dedicated Parks. The submittal of Park Improvement Specifications shall occur following the Open Space Conformance Review process. The preparation, submittal, and review of the Park Improvement Specifications shall be in accordance with the Parkland Agreement.
4. Open Space Compliance Checklist. The project sponsor shall provide a completed Open Space Compliance Checklist, which is attached as Appendix C.2 (Open Space Conformance Review Checklist) to the DWDSG.

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Compliance with applicable DWDSG standards shall be required. Pursuant to the requirements of the GDP, the project sponsor shall consider DWDSG guidelines. Conformance review shall be approved notwithstanding inconsistency with guidelines where the project sponsor provides information showing the subject application achieves the applicable design intent set forth in the chapter objectives of the applicable guideline. Inconsistency with guidelines shall not be grounds for disapproving a Conformance Review application if the project sponsor demonstrates that the application achieves the design intent set forth in the chapter of the applicable guideline. The project sponsor shall provide a narrative that identifies the applicable guideline(s), describes the reason(s) why consistency with the guideline is not possible, and describe how the subject application achieves the design intent in the chapter of the applicable guideline notwithstanding inconsistency with the applicable guideline.

5. Minor Modifications, Exceptions, Deferrals, and Amendments. The project sponsor may request a Minor Modification, Exception to a DWDSG standard, Deferral of a DWDSG Standard, or Amendment to the PD Permit as part of Conformance Review.

C. Standard of Review

1. Standard of Review. The Planning Director shall approve a Conformance Review application if the Conformance Review application (i) is consistent with the General Plan; (ii) is consistent with the GDP and the Downtown West PD Permit; and (iii) complies with any applicable requirements of CEQA. Pursuant to an amendment to Title 20, the Planning Director's decision on a Conformance Review application shall be final and shall not be appealable to the Planning Commission, the City Council, or other City decision making body.
2. General Plan Consistency. The Planning Director's review of an application for consistency with the General Plan shall be limited to review against the applicable General Plan land use designation (either Downtown or Downtown Commercial) to confirm the (i) proposed land use is allowed; and (ii) the proposed size and intensity of improvements are consistent with the allowable height and floor-area ratio. The Planning Director shall also review the application against the applicable DSAP land use designation (either Downtown or Downtown Commercial) and confirm: (i) the proposed land use is allowed; and (ii) the proposed size and intensity of improvements are consistent with the allowable height and floor-area ratio. The Planning Director, to the maximum extent practicable under applicable law, shall rely exclusively on the General Plan and DSAP consistency determinations made in connection with the and approval of the Downtown West PD Zone and the Downtown West PD Permit.

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3. Consistency with GDP and Downtown West PD Permit. The following principles shall apply to guide a consistency determination with the GDP and Downtown West PD Permit:
- a. Diagrams and figures in the GDP and DWDSG illustrate the general arrangement and relationships among future land uses, streets, and open spaces within the PD Zoning District. Blocks, lots, street alignments, and open space configurations are subject to refinement through the Conformance Review and subdivision mapping/improvement plan process;
 - b. Conformance with the GDP and DWDSG shall be construed in a manner that acknowledges adaptive solutions to unforeseen or unique development constraints that arise over an extended built-out to ensure that the full development program and objectives of the approved Project and the City's objectives of promoting growth within the Downtown Growth Area can be fully implemented.

To ensure that project-specific ordinances will control over Title 20 notwithstanding the precedence clause included in Section 20.10.040.A, the following be approved by the City Council as an amendment to the Municipal Code.

20.____.____ Downtown West Planned Development Zoning District.

The standards applicable in the Downtown West Planned Development Zoning District, including but not limited to permitted land uses, building heights, open space requirements, design standards, and subsequent conformance review and approval, are set forth in City Council Ordinance ____, which established the Downtown West Planned Development Zoning District and adopted the Downtown West General Development Plan. Notwithstanding any other provision of this Title 20, City Council Ordinance ____ establishes the applicable standards and requirements for the Downtown West Planned Development Zoning District. In the event of a conflict between Title 20 and City Council Ordinance ____, City Council Ordinance ____ shall control and shall govern development within the Downtown West Planned Development Zoning District.

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4. Consistency Check Form. The Conformance Review application shall include a form document for Planning staff to complete as part of the Conformance Review process (Consistency Check Form).

D. Relief from DWDSG Requirements: Minor Modifications, Exceptions, and Amendments

During the Conformance Review process, the project sponsor may request the following types of relief from DWDSG standards: Minor Modifications, Exceptions, Deferrals, and/or Amendments. The types of relief identified above only apply to DWDSG standards. The DDG has an established process for requesting exceptions to standards which shall continue to govern.

The GDP authorizes, subject to certain enumerated conditions, the project to (1) transfer residential units and non-residential square footage from one Sub-Area to another Sub-Area; (2) adjust the number of residential units and non-residential square footage through conversion of land uses; and (3) increase building heights. The project sponsor may request a transfer or conversion of square footage or increase in building height pursuant to the terms of the GDP. Such a request shall not be deemed a Minor Modification or Amendment as defined below.

Type of Relief	Standard of Review	Decision Maker
<p>Minor Modification: The Project Sponsor may request Minor Modifications from DWDSG standards if certain criteria are met. A Minor Modification consists of the following:</p> <p><u>Quantitative Standard.</u> A deviation of less than 10% from any dimensional or numerical standard in the DWDSG; or</p> <p><u>Qualitative Standard.</u> A deviation from any qualitative standard in the DWDSG where the project sponsor demonstrates that the proposed deviation:</p> <ol style="list-style-type: none"> 1. Does not materially affect the general character or architectural style of the site; AND 2. Is necessary to: 	<p>The Planning Director shall approve a Minor Modification if the following criteria are satisfied:</p> <ol style="list-style-type: none"> 1. The Minor Modification will not result in a new or more significant environmental impact than previously analyzed under the Downtown West Final Environmental Impact Report; 2. The Minor Modification will not be injurious to public health or safety; and 3. As applicable, <ol style="list-style-type: none"> (a) The deviation is less than 10% from a dimensional or numerical standard (if the proposed deviation is from a Quantitative Standard; or 	<p>Planning Director (non-appealable)</p>

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<p>a. Comply with a Project condition of approval or mitigation measure; OR</p> <p>b. Address topographical, geologic, or environmental factors on the site; OR</p> <p>c. Implement an alternative, innovative, new or emerging practice that achieves similar or better outcomes in terms of circulation, sustainability, or the design or performance of buildings or infrastructure; OR</p> <p>d. Reduce impacts on natural habitat or other resources.</p> <p>Deviations that do not meet the criteria above may be processed as an Exception request at the project sponsor's election.</p> <p>Deviations from DWDSG standards that require an Amendment (identified below) shall not be subject to a Minor Modification. In addition, a Minor Modification shall not operate to:</p> <ul style="list-style-type: none"> • Increase the maximum number of residential units or maximum gross non-residential square footage permitted under the GDP; or • Expand the limits of allowable conversion of gross square footage beyond the limits established in the GDP. 	<p>(b) The project sponsor has demonstrated that the proposed deviation from a Qualitative Standard:</p> <ul style="list-style-type: none"> • Does not materially affect the general character or architectural style of the site; AND • Is necessary to: <ul style="list-style-type: none"> o Comply with a Project condition of approval or mitigation measure; OR o Address topographical, geologic, or environmental factors on the site; OR o Implement an alternative, innovative, new or emerging practice that <i>[measurably]</i> achieves similar or better outcomes in terms of circulation, sustainability, or the design or performance of buildings or infrastructure; OR o Reduce impacts on natural habitat or other resources. 	
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<p>Exception: An Exception includes the following:</p> <ol style="list-style-type: none"> 1. A request to waive the application of a particular DWDSG standard to a Vertical or Open Space Conformance Review application; or 2. A deviation that does not meet the criteria for a Minor Modification or is not a Deferral or Amendment. 	<p>An exception to a DWDSG standard may be approved if the project sponsor demonstrates all of the following:</p> <ol style="list-style-type: none"> 1. There is a physical constraint, unique situation, or unforeseen circumstance; 2. Approving the exception will maintain the integrity and character of the neighborhood in which the subject property is located. An exception maintains the integrity and character of the neighborhood if the effect of the exception would not be materially detrimental to public welfare, neighboring property, or nearby improvements and will not create a safety hazard. 3. The project meets the planning objectives of the DWDSG and otherwise achieves the design intent set forth in the DWDSG chapter where the applicable standard appears. 	<p>Planning Director if Conformance Review application, with the requested Exception, can be approved in reliance on the Downtown West Final Environmental Impact Report (EIR), an Addendum to the EIR, or a Supplemental or Subsequent EIR that does not identify any new or substantially more severe significant environmental effects, following mitigation, than those identified in the EIR.</p> <p>If, in order to approve the Conformance Review and accompanying Exception, a Supplemental or Subsequent EIR is required and identifies one or more new or substantially more severe significant effects, following mitigation, the Planning Commission shall hold a hearing on the Conformance Review application and make a recommendation to the City Council regarding certification</p>
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		of the Supplemental or Subsequent EIR.
<p>Deferral: A request to defer compliance with a DWDSG standard.</p> <p>A request for deferral shall not be required for deferred DWDSG standards identified on the Vertical and Open Space Compliance Checklist. The project sponsor shall demonstrate compliance with previously approved deferred DWDSG standards prior to obtaining a building permit for the applicable building.</p> <p>The project sponsor shall provide the following information in a request for deferral of a DWDSG standard:</p> <ol style="list-style-type: none"> 1. Reason(s) why compliance with the standard cannot be accomplished at Conformance Review; and 2. Proposed schedule for compliance with DWDSG standard; and 3. A table or matrix identifying all DWDSG standards that have been deferred and the status of such deferred items. <p>Prior to submitting a building permit application for a building where a Deferral was granted, the project sponsor shall submit to Planning staff a checklist with the</p>	<p>A request to defer compliance with a DWDSG standard may be granted if the project sponsor demonstrates that the requested deferral:</p> <ol style="list-style-type: none"> 1. Is necessary and will not materially delay the development of the Project; 2. Will not impair the ability of the project sponsor to proceed with design and development of the area subject to Conformance Review; and 3. Will maintain the integrity and character of the neighborhood in which the subject property is located or create a safety hazard. <p>The Planning Director may condition the approval of future Subsequent Review applications by requiring substantial evidence that the project sponsor demonstrates progress on deferred standards.</p>	<p>Planning Director if Conformance Review application, with the requested Deferral, can be approved in reliance on the Downtown West Final EIR, an Addendum to the EIR, or a Supplemental or Subsequent EIR that does not identify any new or more severe significant environmental effects, following mitigation, than those identified in the original EIR.</p> <p>If, in order to approve the Conformance Review and accompanying Deferral, a Supplemental or Subsequent EIR is required and identifies one or more new or substantially more severe significant effects, following mitigation, the Planning Commission shall hold a hearing on the Conformance Review application and make a recommendation to</p>

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<p>Deferred standards demonstrating that the previously deferred DWDSG standard has been satisfied. The project sponsor shall indicate on a building permit application that it has complied with all applicable DWDSG standards for the subject building permit application. Project sponsor may submit a demolition and/or foundation-only permit without this verification.</p> <p>The Vertical and Open Space Compliance Checklist identifies DWDSG standards that the City approved for Deferral at the time of Project approval. The project sponsor shall submit an updated Vertical and Open Space Checklist demonstrating compliance with these approved Deferrals prior to submitting the applicable building permit application. A request for Deferral is not required for DWDSG standards that the City approved for Deferral at the time of Project approval.</p>		<p>the City Council regarding certification of the Supplemental or Subsequent EIR.</p>
<p>Amendment: The project sponsor may request an amendment for the following:</p> <p>(1) A permanent deviation from any standard in the DWDSG that would be applied to the design and development of all property within the PD Zoning District; or</p> <p>(2) A deviation from the following DWDSG standards identified below.</p> <ul style="list-style-type: none"> Section 3.2 (Land Uses); 	<p>An Amendment may be approved through Conformance Review where the Planning Director makes all of the following findings:</p> <ol style="list-style-type: none"> The PD Permit, as amended, is consistent with and furthers the policies of the General Plan (as vested under the DA); The Amendment conforms in all respects to the PD Zoning District; The Amendment is consistent with applicable City Council 	<p>Planning Director if Conformance Review application, with the requested Amendment, can be approved in reliance on the Downtown West Final EIR, an Addendum to the EIR, or a Supplemental or Subsequent EIR that does not identify any new or substantially more severe</p>

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<ul style="list-style-type: none"> • Section 3.4 (Demolition and Interim Uses) excluding S3.4.3 and S3.4.6; • The following DWDSG Open Space standards: <ul style="list-style-type: none"> o Minimum open space acreage requirements set forth in S4.5.1 and S4.5.2; o Location of mid-block passages set forth in S4.6.1 and 4.6.3; o Standards related to biological and cultural resources including S4.7.2, S5.5.7; o Riparian Corridor Setback requirements under S4.8.1 and S4.8.3 and other Riparian Corridor dimensions relating to minimum separation from the Riparian Corridor under S4.8.4 o Standards related to required open space programmatic elements for City-Dedicated Open Space (Los Gatos Creek Connector, Social Heart, St. John Triangle, and Northend Park and Los Gatos Creek trail which occurs in Los Gatos Creek Park and Los Gatos Creek East) 4.11.1 • S5.6.2 (heights at Creekside Walk at Autumn 	<p>policies, or counterbalancing considerations justify the inconsistency (as vested under the DA); and</p> <ol style="list-style-type: none"> 4. The interrelationships between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and 5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor, which, even if insignificant for purposes of CEQA, will not have an unacceptable negative effect on adjacent properties. <p><i>[Note: The above findings are those required under the Muni Code for a PD Permit amendment.]</i></p> <p>An Amendment shall not operate to increase the maximum number of residential units or maximum gross non-residential square footage, to decrease the overall amount of open space, or to increase maximum building heights established by the GDP. An Amendment also shall not expand the limits of allowable conversion of gross square footage beyond the limits established in the GDP.</p>	<p>significant environmental effects, following mitigation, than the original EIR.</p> <p>If, in order to approve the Conformance Review and accompanying Amendment, a Supplemental or Subsequent EIR is required and identifies one or more new or substantially more severe significant effects, following mitigation, the Planning Commission shall hold a hearing on the Conformance Review application and make a recommendation to the City Council regarding certification of the Supplemental or Subsequent EIR.</p> <p><u>Appeal of PD Permit Amendment:</u></p> <p>Planning Director approval of a PD Permit Amendment in reliance on an Addendum is appealable to the Planning Commission.</p> <p>If the Planning Director approves a</p>
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<p>Street) and S5.6.3 (blocks with limited heights);</p> <ul style="list-style-type: none">• The following DWDSG standards for building design:<ul style="list-style-type: none">o S5.9.2 in connection with occupiable projections within the Los Gatos Creek Riparian Setback. Deviations to other podium occupiable projection requirements under S5.9.2 are subject to the Minor Modification and Exception processes.o Change in plane for facades greater than 350 feet set forth under S5.9.4;o Skyline level change in plane per S5.10.1 and skyline level separation per S5.10.4;o S5.10.2 and S5.10.3 in connection with skyline occupiable projections, with the exception of deviations from skyline occupiable projection requirements for privately-owned public parks under S5.10.2 and S5.10.3 which are subject to the Minor Modification and Exception processes;		<p>PD Permit Amendment in reliance on a Subsequent or Supplemental EIR (regardless of whether it identifies one or more new or substantially more severe significant environmental effects following mitigation) and the Planning Director's certification of the Subsequent or Supplemental EIR and approval of the PD Permit are both appealed, City Council shall hear the appeal.</p>
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<ul style="list-style-type: none"> o Section 5.11 (Skyline Level Long Facades; • Section 5.15 (Historic Resources); • Section 5.16 (Low-Rise Context); • S5.17.1, S5.17.2 and S5.17.3 in relation to Los Gatos Creek; • Section 6.3 (Street Network) excluding S6.3.3, S6.3.4 and S6.3.6; • Sidewalk zone requirements under S6.4.7; • S6.5.1 and location of bicycle lanes; • S6.6.1 transit access lanes; • S6.16.2 regarding off-street parking supply; • Section 7.4 (Lighting Adjacent to Riparian Corridors); • S7.7.4 regarding retention of historic sign; • S7.9.1 interpretative signage as Project resource. 		
<p>DWDSG DISC Process. Pursuant to S4.9.2, S5.5.5, and S6.3.4, if a DISC Partner Agency takes significant steps in furtherance of the acquisition or condemnation of any portion of Downtown West, the DWDSG authorizes the project sponsor to seek deviations from DWDSG standards as necessary to avoid the acquisition areas while maximizing development potential without requiring an Amendment to the DWDSG. Deviations are</p>	<p>The Planning Director shall approve a deviation requested pursuant to the DISC standards if the proposed deviation is consistent with the General Plan and GDP and compliance with CEQA has been demonstrated.</p>	<p>Planning Director</p>

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<p>permitted pursuant to the DISC standards if the requested deviation is consistent with the General Plan and GDP and compliance with CEQA has been demonstrated (including the completion of any additional necessary environmental review). Such deviations may include, without limitation, changes to required land uses, reconfiguration of the street network, and reconfiguration and proportional reductions in open space. Deviations that result in inconsistency with the General Plan or GDP (e.g. further reduction in the riparian setback) would require an Amendment.</p> <p>The project sponsor may process a clerical update to the DWDSG to memorialize any deviations made pursuant to S4.9.2, S5.5.5, and S6.3.4.</p>		
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F. Conformance Approval Adjustment

Following the submittal of a building permit application for a building subject to an approved Conformance Review application, the project sponsor may seek an adjustment to an approved Conformance Review application (“Conformance Approval Adjustment”) where the building permit application process results in adjustments to design or architectural elements, or landscape details, of an approved Conformance Review Application. The project sponsor may request a Conformance Approval Adjustment prior to the issuance of a building permit and the Planning Director shall approve such request if the Conformance Approval Adjustment does not affect the use, intensity, general character, architectural style, circulation or other site function of Downtown West. The Planning Director’s decision on an Conformance Approval Adjustment shall not require a hearing or notice. The Planning Director’s decision shall be final.

III. Conformance Review Process and Timelines

When a Conformance Review application for Vertical Improvements or Open Space is submitted, the Planning Director’s review and approval of the subject Conformance Review

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application shall be subject to the following review timelines. *[The project sponsor is considering a reimbursement agreement and interagency cooperation agreement/DA exhibit to achieve the timelines identified below.]*

Action	Timeline
Pre-Submission Conference	Approximately thirty (30) calendar days before submitting a Conformance Review application for Vertical Improvements or Open Space, the project sponsor and Planning staff shall hold at least one (1) pre-submission conference at a mutually agreeable time.
Application Submittal	The project sponsor shall submit a Conformance Review application that includes the information identified in <u>Section II</u> above.
Determination of Completeness	<p>Planning staff shall review the Conformance Review application for completeness and within twenty (20) calendar days of the application submittal: (1) advise the project sponsor the application is complete; or (2) identify with specificity any deficiencies with the application.</p> <p>If Planning staff identifies any deficiencies, it shall notify the project sponsor within ten (10) calendar days after receipt of any supplemental information requested whether: (1) the application is complete; or (2) any of the previously identified deficiencies remain.</p> <p>Within the 20-day period, the Planning Director shall also determine whether the Conformance Review application can be approved in reliance on the Downtown West Final Environmental Impact Report, or if a Supplemental or Subsequent environmental impact report is required, does not identify any significant environmental effects. If the Planning Director determines that a Supplemental or Subsequent environmental impact report is required and identifies one or more significant environmental effects, the Planning Commission shall hold a hearing on the Conformance Review application and make a recommendation to the City Council regarding</p>

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	certification of the Supplemental or Subsequent environmental impact report.
Planning Staff Review of Application	<p>Within sixty (60) calendar days of a determination of completeness, the Planning staff and other applicable City departments shall complete its review of the application. If an Open Space Conformance Review application includes a City-Dedicated Park, Planning staff shall complete its review of the application within ninety (90) calendar days of a determination of completeness. Planning staff and the project sponsor shall meet and confer as reasonably necessary during the 60-day review period [90-day review period for an application with City-Dedicated Park]. By the close of the 60-day period [90-day period for an application with City-Dedicated Park], Planning staff shall provide the project sponsor with the completed Consistency Check Form and its recommendation of approval or disapproval of the Conformance Review Application; however, Planning staff shall not publish the Consistency Check Form until the informational community meeting has occurred.</p> <p>If Planning staff recommends disapproval of the Conformance Review application, the Consistency Check Form shall clearly delineate the reasons for recommending disapproval. For example, if Planning staff determines that the project sponsor is inconsistent with a DWDSG standard, it must provide detailed information outlining reasons for the inconsistency. The project sponsor may request to meet with the Planning staff to discuss the reasons for disapproval; such meeting shall occur within seven (7) calendar days of the project sponsor's request. The project sponsor may resubmit its Conformance Review application with modifications, and Planning staff shall review the updated Conformance Review application and provide an updated Consistency Check Form and recommendation for approval or disapproval within thirty (30) calendar days of the resubmittal.</p> <p>The project sponsor may withdraw a Conformance Review application at any time prior to the Planning Director's determination on the application.</p>

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Informational Community Meetings	<p><u>Vertical Improvements & Project Sponsor-Owned Open Space</u></p> <ul style="list-style-type: none">• The project sponsor shall host one (1) community meeting [15-45] calendar days following a determination of completeness.• Notification of the community meeting shall be provided as follows <p><u>City-Dedicated Parks</u></p> <p>If an Open Space Conformance Review application includes a City-Dedicated Park, the following informational community meetings must be held:</p> <ul style="list-style-type: none">• Preliminary Community Meeting Prior to Application Submittal (Preliminary Community Meeting). The project sponsor and/or Conservancy (as defined in the DWDSG) shall host one (1) Preliminary Community Meeting prior to the submittal of an Open Space Conformance Review application that includes a City-Dedicated Park to discuss initial park concepts and potential park names. The intent of this meeting is to make the community familiar with the proposed park and solicit feedback on park amenities.• Community Meeting After Application Submittal. The project sponsor and/or Conservancy shall host one (1) community meeting 15 - 45 calendar days following a determination of completeness of an Open Space Conformance Review application that includes a City-Dedicated Park. During this community meeting, the project sponsor and/or Conservancy shall present design options to the community based on feedback provided during the Preliminary Community Meeting.• Final Community Meeting. The project sponsor and City staff shall present to the Parks and Recreation Commission the final proposed plan for adoption of the park plan and acceptance of
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	<p>the park name. Park naming shall comply with City Council Policy 7-5. This meeting shall be held after holding the post-application submittal meeting, but no later than 80 calendar days after a determination of completeness.</p>
Conformance Review Hearing	<p>Planning Director (<i>No Supplemental or Subsequent EIR</i>)</p> <p>The Planning Director shall schedule a Conformance Review Hearing within fourteen (14) calendar days of providing the project sponsor a copy of the completed Consistency Check Form. Conformance Review Hearings shall be agendized separately from Planning Director Hearings held for other purposes pursuant to Title 20 of the Municipal Code. Conformance Review Hearings may be held on dates when Planning Director Hearings are also scheduled to occur, or they may be scheduled for any other date in the Planning Director's discretion.</p> <p><u>Notice:</u> Notice of the Conformance Review Hearing and the related staff report shall be published on the City's website 72-hours prior to the date of the hearing.</p> <p><u>Public Comment:</u> The Planning Director shall hear and consider all public comments received during the Conformance Review Hearing.</p> <p>Planning Commission / City Council (<i>Supplemental or Subsequent EIR Required & Significant Effect Identified</i>)</p> <p>If the Planning Director determines that a proposed Conformance Review application requires a Supplemental or Subsequent EIR and results in one or more significant effects, Planning staff shall refer the matter to the Planning Commission within fourteen (14) calendar days of providing the project sponsor a copy of the completed Consistency Check Form.</p> <p>The Planning Commission shall hold a public hearing on the Supplemental or Subsequent EIR and make a recommendation to City Council concerning the</p>

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	certification of the Supplemental or Subsequent EIR pursuant to Title 21.
Planning Director Decision	The Planning Director shall provide the project sponsor with a written determination on the Conformance Review Application within seven (7) calendar days of the Conformance Review Hearing.
Appeal of Planning Director Decision	There shall be no appeal of the Planning Director's Conformance Review decision. <i>[Note: This will require amendments via the PD Zoning Ordinance to Title 20 and Title 21 and a conforming addition to Title 20.]</i>

IV. Key Requirements for Horizontal Improvement Subsequent Review Process

The Vesting Tentative Map (and any future tentative map) will be subject to conditions of approval requiring the project sponsor to complete open space, infrastructure, and any other horizontal improvements consistent with the GDP and PD Permit (DWDSG Chapter 6: Mobility and other applicable standards in the DWDSG), the Downtown West Improvement Standards, Infrastructure Plan (attached to the Development Agreement), and applicable standards and guidelines in the Complete Streets Design Standards and Guidelines. The project sponsor will be required to demonstrate that all phased final maps and associated improvements, as described on 100% tract improvement plans, are consistent with the conditions of approval. However, and to provide for additional City oversight, subdivider will submit "preliminary" improvement plans to the City for review and comment (as described in Section IV.B, below) as a precondition to submitting any phased final map application or 100% improvement plan set.

A. Horizontal Preliminary Review Process

1. Overview

Project sponsor will provide preliminary tract improvement plans for horizontal improvements ("Preliminary Improvement Plans") to the Director of Public Works ("PW Director") for review and comment by City agencies (hereafter "Horizontal Preliminary Review"). Preliminary Improvement Plans submitted to the PW Director shall be developed to [35%, 65% and 95%]. Upon receipt of Preliminary Improvement Plans, the PW Director will distribute the plans electronically to the heads of any City departments responsible for permitting, reviewing, or operating any improvement depicted in the plans ("Commenting Departments"). The review and approval timelines for the [35%, 65% and 95%] Preliminary Improvement Plans are set forth in

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Section A.3.C below. The Horizontal Preliminary Review Process will provide Public Works and other Commenting Departments with an opportunity to review and comment on horizontal improvement plans for purposes of ensuring conformance with the Project approvals and controlling City regulations prior to project sponsor's submittal of 100% tract improvement plans for any development phase.

2. Horizontal Preliminary Review Submittal Requirements for [35% Plans]

The project sponsor shall submit the following information for Improvement Plans developed to [35%]:

- a. Project Narrative. Include scope of project, site description, a schematic construction layout plan, and a preliminary schedule for design through construction.
- b. [35]% Tract Improvement Plans encompassing all improvements required as a condition of approval for the associated tentative map or vesting tentative map.
- c. Infrastructure Phasing Description that includes a description of how proposed horizontal improvements align with the Infrastructure Plan and tie into prior and future development phases, as applicable.
- d. Site Grading Plan and Stormwater Control Plan: With existing and proposed street grades, pad grades, overland release routes, grade conforms, street centerline grades and vertical curves and details for onsite private treatment control measures.
- e. Description of Public Infrastructure: Summary of all infrastructure proposed for public dedication, including whether such proposed publicly-dedicated infrastructure is consistent with the Maintenance Matrix (Exhibit __ to the Development Agreement), as it may be amended from time to time.
- f. Preliminary Utility Modeling Reports: Water (San Jose Water Company to provide), Sanitary (City of San Jose to provide), Storm Drain (Applicant to provide). *[To be confirmed with the City]*
- g. Typical Street Section Plan: Including lane dimensions, sidewalk dimensions, roadway materials, grades, curb heights, and utilities, including all horizontal clearances.
- h. Street Layout Site Plan: Including roadway dimensions, bulb-out locations, traffic calming measures, non-standard roadway conditions for acceptance, horizontal curves, horizontal sight distance studies, transit facilities, street lights, bikeway and trail dimensions, streetscape design and roadway

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materials. A separate street layout site plan shall be provided for private streets.

- i. Conceptual Stormwater Management Plan (public streets): Description, preliminary calculations, preliminary details and plan view layout of how the stormwater management will be achieved.
- j. Waste Management Plan, including the location and specifications of the solid waste enclosure or room, including dimensions, roofing structures, and drainage; number of waste containers to be placed inside the enclosure or room, the types of containers to be used, and the frequency of collection; the circulation plan for the hauler to enter and exit the site; and waste pick-up location.
- k. Preliminary Geometric (Signage and Striping) and Traffic Signal Plan.
- l. Landscape Plan (if median and/or backup landscaping in the public street is proposed).
- m. Utilidor Crossing and Encroachment Plan.
- n. Site Utilization Plan

The submittal requirements for the 65% and 95% Preliminary Improvement Plans will be developed in coordination between the project sponsor and the City.

3. City Review of Horizontal Preliminary Review

Commenting Departments will review the Preliminary Improvement Plans and other materials provided under Section IV.A.2 for consistency with the San Jose Municipal Code, the Downtown West Improvement Standards, and any other form-based code requirements or applicable engineering standards. Comments from the Commenting Departments will be provided to the project sponsor as described in Section IV.A.1, and Subdivider will document responses to said comments as described in Section IV.B.1.

The Horizontal Preliminary Review timelines for [35%, 65% and 95%] Preliminary Improvement Plans are as follows:

[35%] Preliminary Improvement Plans

The heads of the Commenting Departments will provide any comments on the Preliminary Improvement Plans to the PW Director within [30] calendar days of project sponsor's submittal of said plans to the PW Director. The PW Director will compile all comments and provide them to the project sponsor no later than [35] calendar days of the project sponsor's original submittal of Preliminary Improvement Plans to the PW Director.

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[65%] Preliminary Improvement Plans

The heads of the Commenting Departments will provide any comments on the Preliminary Improvement Plans to the PW Director within [21] calendar days of project sponsor's submittal of said plans to the PW Director. The PW Director will compile all comments and provide them to the project sponsor no later than [26] calendar days of the project sponsor's original submittal of Preliminary Improvement Plans to the PW Director.

[95%] Preliminary Improvement Plans

The heads of the Commenting Departments will provide any comments on the Preliminary Improvement Plans to the PW Director within [21] calendar days of project sponsor's submittal of said plans to the PW Director. The PW Director will compile all comments and provide them to the project sponsor no later than [26] calendar days of the project sponsor's original submittal of Preliminary Improvement Plans to the PW Director.

B. Final Subdivision Mapping and Improvement Plans

The project sponsor shall apply for approval of subdivision maps and improvement plans pursuant to the procedures described in Title 19 of the Municipal Code and any ordinances governing the design and permitting of subdivisions and improvements applicable to projects within the Downtown West PD Zoning District.

During the final subdivision mapping and improvement plan process, the project sponsor shall demonstrate compliance with all tentative map conditions of approval to ensure that horizontal improvements are consistent with the GDP and PD Permit (DWDSG Chapter 6: Mobility and other applicable standards in the DWDSG), the Downtown West Improvement Standards, Infrastructure Plan, and applicable standards and guidelines in the Complete Streets Design Standards and Guidelines.

1. Final Map and Improvement Plan Submittal Requirements.

The project sponsor shall submit the following:

- a. 100% Improvement Plans
- b. Private Improvement Plans (for those improvements required to serve the subdivision).
- c. Matrix Addressing all Horizontal Preliminary Review Comments. Concurrent with project sponsor's submittal of 100% improvement plans to the City, project sponsor shall provide a summary matrix documenting how each comment received as part of the Horizontal Preliminary Review has been addressed, or, why any particular comment has not been incorporated.

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- d. Final Map Checkprint, including a title report, closure calculations and map references.
- e. Tentative Map Conditions of Approval Compliance Matrix. The project sponsor shall prepare a matrix of the tentative map conditions and identify in writing how the proposed final map or other documents satisfy the conditions of approval. The conditions of approval shall require compliance with applicable standards and guidelines in the DWDSG (Chapter 6 (Mobility) and other DWDSG standards designated *[HI]*) in addition to applicable standards and guidelines in the CSDSG, which are identified in the Horizontal Conformance Checklist.
- f. Horizontal Improvement Conformance Checklist. The project sponsor shall provide a completed Horizontal Improvement Compliance Checklist which is attached as Appendix C.3 to the DWDSG and primarily reflects the DWDSG Mobility chapter and Complete Streets Design Standards and Guidelines. Compliance with applicable DWDSG standards shall be required. Pursuant to the requirements of the GDP, the project sponsor shall consider DWDSG guidelines; however, consistency with any particular number of guidelines is not required. Conformance review shall be approved notwithstanding inconsistency with any guideline where the project sponsor provides information showing the subject application generally promotes the design intent set forth in the DWDSG chapter where the applicable guideline appears.
- g. Updated Maintenance Matrix (if needed).

2. Final Map and Improvement Plan Review Process

The City shall process, review and approve the improvement plans and final pursuant to the procedures established in Title 19 of the Municipal Code and any ordinances governing the design and permitting of subdivisions and improvements applicable to the PD Zoning District.

3. Relief from DWIS and Infrastructure Plan *[in progress]*

- DWIS. The project sponsor may request: (1) relief from a 1992 standard that has not been superseded or modified by the DWIS; (2) relief from an existing standard in an ancillary document referenced in the DWIS; or (3) application of a future modification of a standard in an ancillary document to Downtown West. A request for relief shall be submitted to, and approved by, the Public Works Director for public improvements or privately-owned improvements on public property, or the Planning Director with respect to privately-owned improvements on private property, provided that the proposed alternative standard: (1) is consistent with sound engineering practices, as may be evidenced by reference to industry standards; and (2) if applied, would not result in horizontal improvements that present a substantial risk to public health and safety.

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- Infrastructure Plan. The Downtown West Infrastructure Plan describes the horizontal improvements to be constructed as part of Downtown West. The Infrastructure Plan, which is an exhibit to the Development Agreement, works in tandem with the DWIS, Infrastructure Plan Sheets, and DWDSG, to set forth the City's and project sponsor's responsibilities relating to the design and construction of the horizontal improvements. project sponsor may request deviations or amendments from the Infrastructure Plan. The project sponsor may request (1) minor deviations, (2) non-material amendments, or (3) material amendments from the Infrastructure Plan. [The criteria for a minor deviation, non-material amendment, and material amendment are in progress.]